

Frequently Asked Questions

1 - Can you provide clarification of the Withholding Tax on Contractors?

As you know, in March 2009, a new provision was added to the Afghan Tax Law 2009. Article 72 provides for a withholding tax on subcontractors. Subcontractors that are not registered with AISA and that provide supplies, materials, construction and other services under contract, are subject to a 7% fixed tax. Subcontractors that are registered with AISA and provide the services listed above are subject to a 2% withholding tax.

Foreign subcontractors are exempt from such withholding. However, USAID prime contractors/partners are not exempt from withholding this tax on their Afghan subcontractors. The SOAG exempts non-national organizations and persons from the withholding – not Afghan subcontractors.

Foreign/international companies contracting to USAID prime contractors are not technically liable to pay tax under SOAG. However, the legal division of the Afghanistan Revenue Department (ARD) must issue a letter (exemption certificate) in every case in order to allow the exemption for administrative purposes. In other words, such subcontractor should have an official exemption letter from the ARD. Therefore, these subcontractors should send a letter to the ARD Legal Department requesting an exemption (private ruling). A copy of its contract (just the cover sheet) must be included. The Legal Department of ARD has copies of the SOAG, so it is not necessary to provide this as well. The Department will review the documents and issue a letter confirming exemption. If exemption letter is not issued by ARD, they will not be tax exempted. Therefore, please be advised to instruct you international subcontractor contracting with USAID prime contractors accordingly.

2 - We are starting up our Kabul Office this week and were wondering what the regulations were for bringing cash into Afghanistan. Does the Afghan government limit the amount of cash that we can bring in at one time?

There are no restrictions on bringing cash/funds into Afghanistan. An organization after getting registered shall locate and set up its Afghani and foreign currency accounts in a designated bank account within Afghanistan. Afghanistan does not maintain a dual exchange-rate regime, currency controls, capital controls, or any other restrictions on the funds entering Afghanistan from abroad.

Transferring money through wire transfer (in any designated banks like SCB and AIB, etc) is not restricted by any law or regulation. However, in practice, particularly in the provinces, many banks may not have the capacity to deal with large sums of money.

The government does not limit the inflow of funds for remittances of profits, debt service, capital, capital gains, returns on intellectual property, or imported inputs, provided that applicable taxes have been paid.

The only requirements placed on the outflow of funds are to prevent money laundering. For example, any transfer from Afghanistan to any other country that equals or exceeds AFS one million (USD 20,000) or equivalent must be carried out through a duly authorized or permitted banking organization or licensed money service provider.

The transport of more than AFS one million or equivalent in cash across the border of Afghanistan into another country must be reported in advance to the Financial Intelligence Unit of Da Afghanistan (Central) Bank.

One alternative to carrying large sums of money is fast international money transfer by Western Union. These are found in almost every Afghan town, and often in branches of Kabul Bank in the cities. Fees are paid by the person wiring the cash, not by the person collecting.

Finally, Please be sure that there is no limitation on this issue in Afghanistan, but should carry money via designated banks, it is not recommend that travelers carry large amounts of cash with them, it is risk full. It should be entered through a designated bank within Afghanistan.

If you have not set up an account in any designated bank within Afghanistan and if they are looking for office space, drivers and the registration process, they need the cash on hand to pay, the best way is money exchange dealers (*hawaladars*), The money exchange dealers provide a diverse range of financial business services in local, regional, and international markets like money exchange transactions, funds transfers, micro-finance, trade finance, and deposit taking and have long provided their customers with a reliable, convenient, and inexpensive means of transferring funds into Afghanistan and among its provinces.

They have been instrumental in providing financial services for the majority of international and domestic NGOs, donor organizations, and development aid agencies.

3 - Under what authority does the Afghan Cabinet issue regulations? And what is the process?

According to the article (76) of the Afghan Constitution, which states (Chapter four/ Article (76) "To implement the fundamental lines of the policy of the country and regulate its duties, the government shall devise as well as approve regulations, which shall not be contrary to the body or spirit of any law"), the Afghan Cabinet has the authority to devise and approve or issue the regulations. It means they have the constitutional right to do this.

The regulations are originated in the relevant Ministry or Institutions and are submitted to the Ministry of Justice/Taqnin (legislative Department) to scrutinize and review, once the review process is finalized in Taqnin's (legislative) stage the regulation needs to be submitted to the Council of Ministers for their approval, after it gets approved by Council of Ministers it will be delivered to the president for endorsement. After the endorsement of the president the regulation will be submitted back to the Ministry of Justice for publication in the official gazette.

The laws are excluded from this process, since the laws need to be submitted for the approval of the parliament which proceeds via Ministry of Parliamentary Affairs, but the regulations do not need to be processed through parliament.

4 - How are the regulations to be enforced? Will some particular ministry take responsibility?

Once the regulations get passed from the Cabinet and endorsed by the president, it will be considered as enforced regulation from the time of endorsement or after the publication in the official gazette.



The relevant Ministry or Institution which drafts and proposes a regulation is responsible for enforcing the regulation and implementing it within their Ministry or Institutions. No particular Ministry or Institution is responsible in this regards.

3 - Is there a date for implementation?

Once the process stated above take place and finalized, the regulation will be published in the official gazette and after that the relevant ministry or institutions will implement the regulation based on the provisions stated in the relevant regulation.

5 - What is the status of the Law on Private Security Companies?

The Law on Private Security Companies is still under the consideration of National Council and has not been approved yet.

A regulation has been submitted to the council of Ministers by the Ministry of the Interior (MoI), but it has not been approved by the president since its law is under the process and no regulation could be drafted prior to the relevant law.

No regulation regarding private security companies have recently been approved or published in official gazette, and every regulation/decree/law is enforced after publishing in the Official Gazette (OG).

6 - Is there any decree on the imposition of limits on salaries and additional outside payments to government civil servants?

Yes there is, the serial number is 821 and date of issue is 03/03/2004.

7 - Is there a law on the employment of foreign citizens in Afghanistan?

There is no specific law/code on employment of foreign workers in Afghanistan, but the Regulation on the Employment of Foreign Citizens in Afghanistan says:

Restrictions on employment

Article (6):

If both domestic and foreign workers are available, priority is given to domestic workers.

This regulation allows foreigners to work in Afghanistan based on the following articles.

Issuance of work permits

Article (7):

- The Ministry of Labor and Social Affairs issues the work permit against a fixed cost.
- 2. The cost of the permit mentioned under item (1) of this article considering criteria for time limit shall be fixed by the ministries of Labor and Social Affairs and Finance.
- Identification of employee such as location of work, work specification, date of beginning of duty and time validity, shall be specified in the Work Permit. Validity of work permit is one year. If the work permit is extended, it may be for another term.



Recruitment of foreign expatriates

Article (12):

- Joint ventures and the private sector, in which foreign entrepreneurs or international
 organizations invest, may employ the concerned foreign staff and expatriates according to the
 provision of these statutes in line with the Afghanistan Private Domestic and Foreign Investment
 Law.
- 2. Foreign citizens employed in the organizations, whenever needed shall issue their educational documents to the Ministry of Labor and Social Affairs.

8 - Can foreigners own land in Afghanistan?

Article (41) of Afghan Constitution discusses this issue and says: Foreign individuals shall not have the right to own immovable property in Afghanistan. Lease of immovable property for the purpose of capital investment shall be permitted in accordance with the provisions of the law.

This article also says that: Sale of estates to diplomatic missions of foreign countries as well as international organization's to which Afghanistan is a member shall be allowed in accordance with the provisions of the law. It means that diplomatic organizations may own property; foreign corporations and individuals cannot.

Article (14) of Law on Domestic and Foreign Private Investment in Afghanistan says that: Foreign investors, based on the classification of their approved enterprises as short-term, medium-term or long term may lease real estate for ten, twenty of thirty years, respectively. Lease of land is conditional to implementation of the project. The High Commission based on need and justifiable cause can extend the period of the lease.

9 - How does the legislative process (lawmaking) function in Afghanistan?

This information provides a general overview of the legislative process in Afghanistan;, who the main actors are, and how legislation is brought about. It is largely based on Afghanistan's main texts governing procedure: The Constitution of Afghanistan, Official Gazette #787 and The Rules of Procedure of the Wolesi Jirga the Lower House of Parliament.

Any law has to be approved by both Houses of the National Assembly (NA) and endorsed by the President.

Proposal for drafting a law is made by: 1) Supreme Court: Chief Justice submits proposal for drafting a legislative document "in the domain of regulating judiciary" to the government. 2) Government: Minister, agency head, or independent Government departments make proposal for drafting a legislative document (to be included in the Council of Ministers' Annual legislative Work plan). 3) National Assembly: Ten or more members of either chamber of the National Assembly make proposal for drafting legislative (except budget and financial affairs law) and proposal shall be approved by one-fifth (20%) of chamber in which is originated.

Afterwards, it is first submitted to the Wolesi Jirga (the Lower House), which has one month to either approve or reject it by two-third.



The proposal is then submitted to the Meshrano Jirga (the Upper House), which will decide its approval or rejection in fifteen days.

In case the President rejects what the National Assembly has approved, he/she shall send it back, within fifteen days from the date it was presented to the Lower House outlining the reasons for rejection and, expiration of the period. If the House of People re-approves it with two thirds of all the votes, the draft will be considered endorsed and enforceable. Proposals for drafting the budget and financial affairs law shall be made only by the Government.

While deciding about the proposed laws, the National Assembly shall give priority to treaties and development programs that the government considers them to be urgent.

The state budget and development program of the government shall be submitted, through the Upper House to the Lower House. If it is approved by the Lower House, it will be implemented without being submitting to the Upper House, after endorsement by the President. In case of discussing urgent matters such as the annual budget, or development program, or issues related to the national security, territorial integrity and independence of the country, the sessions of the Assembly shall not end until a decision is made.

If one House rejects decisions of the other, a joint commission comprised of an equal number of members from each House will be formed to solve the difference. The decision of the commission shall be enforced, after endorsement by the President. In case the joint commission cannot solve the difference, the decision will be considered rejected. In such cases, the Lower House will pass it with two-thirds majority in its next session, and will have it endorsed by the President.

Sessions of the National Assembly: Both Houses of the National Assembly will convene two regular sessions for the term of nine months annually. The sessions are held concurrently, but separately, unless:

- 1. The legislative term or annual sessions are inaugurated by the President;
- 2. It is deemed necessary by the President.

The speaker of the Lower House shall preside over the joint sessions of the National Assembly. The sessions are open, except when the Speaker of the NA or ten members of the House request its secrecy and it is granted by the NA.

The President can order extraordinary sessions of the NA during recess. The Secretariat of the National Assembly: Upon commencement of their work period, each of the two houses of the National Assembly elects one member as the Speaker for the term of the legislature, and two members as, first and second deputies, and two members as secretary and assistant secretary for a period of one year.

These individuals shall form the administrative teams of the Lower House as well as the Upper House.

Regulations of Internal Duties will determine duties of the administrative team.

The Lower House has the authority to establish a special commission on the proposal of one third of its members to review, as well as, investigate the actions of Government.



10 - If the property is owned by the U.S. Government, then I suppose the above requirements don't apply?

You are right, if the property belongs to USG, it doesn't apply. However, there should be a protocol between USAID and partner listing all properties which are owned by the USG or purchased by USAID funded programs (i.e. the XYZ partner is implementing X project until X and the properties listed are all USG owned properties and will be return to USAID upon completion of the project).

When the partner shows the protocol to NGO Department of MoE, they recognize this and will allow the partner to return the property to USAID or any other USAID programs.

11 - I have a question from my contractor on the law on payment of vendor tax. What is USAID's advice on whether we have to pay this?

In your question, the type of vendor and nature of business with vendor is not clear. However, generally, the vendor is obliged under the Income Tax Law to deduct tax from the payments he would be making, which is an advance tax of the payee adjustable against his final tax liability. Since USAID (the payee in the given preposition) is exempt from tax under the provisions of Technical Agreement 1951 and SOAGs 2005 between USG and GIRoA, no deduction from payments shall be required if these payments fit in the terms of these Agreements. To exonerate the payer from his legal obligation to withhold tax, USAID may issue a letter to him by referring to these Agreements that their receipts are exempt from tax. You as a COTR at USAID can arrange a letter from our EXO regarding the issue.

If the vendor is working as a sub-contractor for USAID prime contractor, the sub-contractor should send a letter to the Afghanistan Revenue Department, Legal Department requesting an exemption (private ruling). A copy of its contract must be included. The Legal Department has copies of the SOAG, so it is not necessary to provide this as well. The Department will review the documents and issue a letter confirming his exemption. If exemption letter is not issued by ARD, they will not be tax exempted. Therefore, please advise all USAID contractors and partners to instruct their subs as above.

Please see the attached info sheet we provide to all our partners, it has more information on tax issue.

Remember and inform your contractor that: Even fully exempt organizations must file a tax return if they fit the criteria as outlined in Article 87, regardless of the fact that they may owe no tax. Failure to do so may result in penalties being assessed for failing to file. Annual income tax returns, as well as all other tax returns, are available at the Medium Tax Office.

12 - Can you clarify if the renter MUST withhold the rental tax or can the renter allow the landlord to pay the tax from the total amount of the rent (which includes the tax)?

It is renter's responsibility to withhold this tax. The Dari version of the law says: Tax collected under article 59 shall be paid by the tenant (renter) in respect of the income tax liability of the landlord. This means that the renter MUST always withhold the tax; the law does NOT say that landlord can pay tax directly.

Also the a copy of agreement shall be sent a copy to the Ministry of Finance as soon as it is signed

Also, there are two separate requirements under the law with regard to rental tax. According to Article 59, the tenant must withhold and remit tax on rent. Under Article 87, the landlord is required to file a tax return, report the income from rental of the property, and pay tax accordingly. The amount withheld by the tenant is reported as a credit against his income tax liability.



There are penalties associated with failure to withhold, as there are penalties associated with failure to file and pay income tax. Both renter and landlord must meet their obligations under the law.

13 - What is annual tax filing?

With regard to your question about annual tax filing, Chapter 13 of the 2009 Income Tax Law (Articles 87 and 88) provides details of this legal requirement. Even fully exempt organizations must file a tax return if they fit the criteria as outlined in Article 87, regardless of the fact that they may owe no tax. Failure to do so may result in penalties being assessed for failing to file. Annual income tax returns, as well as all other tax returns, are available at the Medium Tax Office.